

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DIOMINA ASTO,

Plaintiff,

ECF CASE

- against -

Docket No. 07 CIV 4787
(UA)(GAY)
WP4

THERESA R. BETTER and ROBERTO BETTER,

Defendants.

=====X

NOTICE OF MOTION

COUNSEL:

PLEASE TAKE NOTICE, that upon the annexed declaration of **ROBERT W. FOLCHETTI**, upon the exhibits annexed to and made a part of this motion, and upon all of the prior pleadings and proceedings had herein, the undersigned will move this Court, before the Honorable George A. Yanthis, United States Magistrate Judge, at the United States Courthouse, 300 Quarpoas Street, White Plains, New York on the __th day of June, 2007, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order:

- (1) pursuant to 28 USC §1447(c), remanding this action to the New York State Supreme Court, Bronx County, on the ground that there has been no objectively reasonable demonstration of the minimum amount in controversy required to support the claim that this Court has diversity jurisdiction over the instant action; and
- (2) pursuant to 28 U.S.C. §1447(c), awarding to the plaintiff attorney's fees and costs incurred in connection with the improper removal of this action to the United States District Court; and
- (3) pursuant to the discretion of this Court, granting such other and further relief which may seem just and proper.


PLEASE TAKE FURTHER NOTICE, that pursuant to the Federal Rules of Civil Procedure, opposing affidavits, if any, must be served upon the undersigned not later than five (5) days prior to the date of the hearing of this motion,

OR

PLEASE TAKE FURTHER NOTICE, that pursuant to the Individual Practices of Judge Yanthis, a pre-motion conference has been held, at which time a briefing schedule was set by the Court, which required opposing affidavits to be served no later than July 6, 2007.

Dated: Port Chester, New York
June 22, 2007

KLEIN & FOLCHETTI
Attorneys for Plaintiff

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